

**Officer Involved Shooting of Walter DeLeon
Los Angeles Police Department**

Officer Cairo Palacios, #41829

J.S.I.D. File #15-0309



JACKIE LACEY

District Attorney

Justice System Integrity Division

August 7, 2017

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
 Los Angeles Police Department
 Force Investigation Division
 100 W. First Street, Suite 431
 Los Angeles, California 90012

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
 Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Walter DeLeon
 J.S.I.D. File #15-0309
 L.A.PD. File #F049-15

DATE: August 7, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 19, 2015, non-fatal shooting of Walter DeLeon by Los Angeles Police Department (LAPD) Officer Cairo Palacios. It is the conclusion of this office that Officer Palacios acted reasonably and lawfully in self-defense and in defense of others when he used deadly force against Walter DeLeon.

The District Attorney's Command Center was notified of the shooting on June 19, 2015, at approximately 8:10 p.m. The District Attorney Response Team responded and was given a walk-through of the scene.

The following analysis is based on investigative reports and witness statements taken during the investigation by the LAPD Force Investigation Division, and submitted to this office by Detective Eduardo Gonzalez. The reports also include photographs and radio communications recordings.¹ The compelled statements of Officer Cairo Palacios, and his partner, Officer Garrett Stults, were considered as part of this analysis.

FACTUAL ANALYSIS

On June 19, 2015, at approximately 6:33 p.m., Security Services Division Police Officers Cairo Palacios and Garrett Stults, en route to Northeast Police Station to complete a traffic report, were stopped in traffic in the eastbound number two lane of Los Feliz Boulevard and Tica Road.² Suddenly, a man, later identified as Walter DeLeon, walked toward them on the grass parkway with his right hand wrapped in a T-shirt. DeLeon raised his arms, clasped them in a two-handed shooting stance and aimed at the officers. DeLeon had both arms directly extended in front of him and appeared to be aiming directly at the officers as he held what appeared to be a handgun wrapped within a T-shirt.

¹ Neither officer was wearing body worn video, nor was the officers' patrol vehicle equipped with digital in-car video (DICV).

² The officers were in uniform and in a marked patrol vehicle.

Palacios immediately reacted by placing the car in park and exiting. Palacios quickly moved to the trunk area on the driver side and unholstered his pistol. Although Palacios repeatedly ordered DeLeon to drop the gun, DeLeon nonetheless continued to advance upon the officers. Palacios fired three consecutive rounds striking DeLeon once in the head.³ DeLeon was approximately 27 feet from Palacios when he was struck by gunfire.



Demonstration of the Officers' and DeLeon's Positions at the Time of the Shooting Per Officer Stults



Bullet Trajectory

DeLeon fell to the ground on his back landing with his right hand, still wrapped in the T-shirt, on top of his chest.

³ Palacios was armed with his department issued .40 caliber Glock semiautomatic pistol.



DeLeon on the Ground and Officers Behind a Parked Car Following the Shooting

Dr. Edwin M., a licensed physician, was driving by the scene and stopped to assist the officers in rendering medical assistance to DeLeon. Edwin M. concluded DeLeon sustained one through-and-through gunshot wound to the head. Paramedics responded shortly thereafter and transported DeLeon to Los Angeles County – University of Southern California Medical Center (LAC-USCMC) for additional medical treatment. Upon his release from the hospital, DeLeon retained legal representation and did not make himself available for an interview by Force Investigation Division (FID) investigators.⁴

Three expended cartridge cases were collected at the scene, which were later determined to have been fired from Palacios' pistol. This information is consistent with Palacios having fired three rounds. A rolled up gray shirt was also recovered from the scene. A subsequent examination revealed there was no weapon contained within the shirt. The shirt was a medium gray shirt with white long sleeves and apparent dry blood stains. However, the blood on the shirt appeared to be unrelated to the shooting. Following the shooting, Juan N., a bus driver for the Metropolitan Transit Authority (MTA), contacted investigators to report that he had observed DeLeon sitting on a bus bench on Los Feliz Boulevard earlier that morning. At that time, DeLeon had a T-shirt wrapped around his left arm (from his elbow to his wrist), and the T-shirt appeared to have a few spots of dry blood on it. Juan N. noted that DeLeon did not look "like he was all there" and did not stand up for the bus, so Juan N. just kept going on his route.

⁴ Per the investigating officer, Detective Eduardo Gonzalez, numerous attempts were made to contact DeLeon in order to arrange an interview. DeLeon failed to respond to requests for an interview.



DeLeon's Shirt Rolled-up as Recovered from the Scene



DeLeon's Shirt Once Un-rolled for Examination

Ten individuals were identified as civilian witnesses to the shooting. These witnesses were seated in their respective vehicles stopped in traffic in the eastbound lanes of Los Feliz Boulevard at the time of the shooting. Although for the sake of brevity only a few of the witnesses' statements are summarized below, *all* of the witnesses described perceiving DeLeon's actions as those of someone who was about to shoot at the officers.

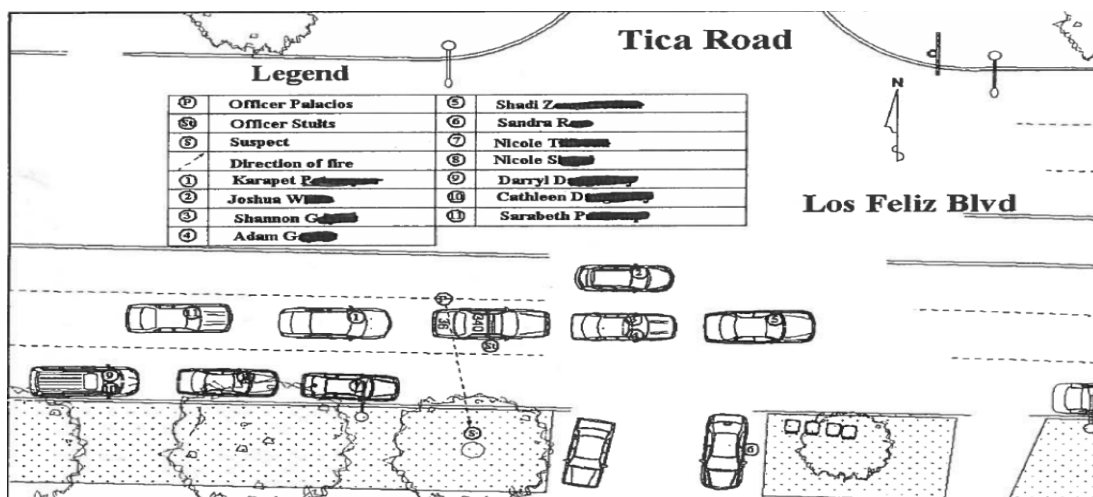


Diagram Demonstrating the Positions of the Witnesses' Vehicles at the Time of the Shooting

Statement of Claus M.

At approximately 6:33 p.m., Claus M. was walking west on the south sidewalk of Los Feliz Boulevard near Richland Avenue, one block west of Tica Road, when DeLeon approached him and told him to call 9-1-1. DeLeon told Claus M. to report that there was a man armed with a gun and that he, DeLeon, was that person. DeLeon repeated the statement and continued walking east toward Tica Road. Claus M. promptly used his cell phone to call 9-1-1. In the 9-1-1 recording, Claus M. gives the operator his location and states, “A gentleman just walked by me and said, ‘Call 9-1-1. Let them know I’m walking down the street, and I have a gun in my hand.’” Claus M. provided a physical description of DeLeon, but stated he was unable to see a weapon because “It was covered in a towel.” While on the phone with the 9-1-1 operator, Claus M. heard gunshots but was unable to see the shooting from his location.

Statement of Karapet P.

Karapet P. was in his vehicle, stopped directly behind the police vehicle, when he heard DeLeon yell “Cops!” about twelve times in a repetitive, monotone tone. DeLeon appeared “cuckoo.” DeLeon approached a big redwood tree holding what appeared to be an “actual gun” wrapped in a T-shirt. Karapet P. was sure that DeLeon had a gun within the T-shirt. Karapet P. stated that the shape of the object “looked exactly like you would hold a gun and wrap it with a T-shirt.” Everything about what DeLeon was holding - the thickness and shape of the T-shirt, the structure, the muzzle, the barrel, the hammer - led Karapet P. to believe that DeLeon was holding a gun under the T-shirt. It appeared as if DeLeon had two T-shirts wrapped around the gun because the barrel of the gun appeared to be white, but the top was gray. Although DeLeon was pointing the gun at the police, from his position Karapet P. was “literally looking at the barrel of the gun.”

DeLeon pointed the apparent gun at the officers as he walked towards them. One police officer “bolted” out of the car and the driver officer went to the back of the trunk of his vehicle. An officer ordered DeLeon three separate times to drop the gun. The officer then directed his partner to move to the left, and two gunshot sounds followed.

It appeared as if DeLeon “was about to shoot the officers.” It did *not* appear as if DeLeon was calling for help or just trying to get the officers’ attention. Karapet P. stated, “That’s what I thought at first, but then as soon as he lifted that gun looking object in his hand, I’m like okay, this guy’s dead. You don’t do that. Every common person in the country knows that.”

Karapet P. recorded the officers’ post-shooting actions on his cell phone and provided this cell phone footage to investigators. The video footage depicts both officers standing over DeLeon as he is laying in a supine position on the ground. (The right side of DeLeon’s body is not visible in the video.) Massive bleeding is seen on DeLeon’s head. Palacios turns DeLeon by the right wrist onto his stomach and handcuffs him. DeLeon appears to be making slight movements with his body as the officers remove a water bottle from his shorts’ front pocket.⁵

Statement of Adam G. and Shannon G.

Adam G. and Shannon G. were in their vehicle directly in front of the officers’ patrol vehicle. Shannon G. was in the driver’s seat and Adam G. was the front passenger. Both observed DeLeon

⁵ The video footage is approximately a minute and sixteen seconds long.

headed towards the police vehicle with what appeared to be a gun under a towel. DeLeon appeared agitated as he loudly yelled, “Hey, cop!” approximately three times. DeLeon pointed the gun at both officers as he held the gun with both hands together in a shooting stance. Although neither could see the actual gun under the towel, nor DeLeon’s hands inside the towel, the shape of the object DeLeon was holding resembled a gun. Adam G. stated there was “no doubt he [DeLeon] was pointing the gun directly at the officers.” The officers repeatedly ordered DeLeon to drop the gun, but DeLeon kept advancing towards the officers. Shannon G. noted that DeLeon was “running towards” the police vehicle at this time. Three to four seconds later, they both heard gunfire.

Moments after the shooting, Adam G. video recorded the incident on his cell phone and provided the video recording to investigators. The video begins as Adam G. and Shannon G. are driving away from the scene. The video shows DeLeon laying in a supine position on the ground with his right hand wrapped in a shirt and resting on top of his chest. The officers are seen taking cover, positioning themselves behind a black car parked on the driveway adjacent to the curb where DeLeon is on the ground. Shannon G. is overheard exclaiming, “Oh, my God! Why was that guy doing that?” and Adam G. responding, “I don’t know.” The video does not capture any audio from the officers.⁶

Statement of Joshua W.

Joshua W. was in his vehicle, to the left of Adam and Shannon G.’s vehicle which was parked directly in front of the officers’ vehicle. Joshua W. observed DeLeon holding what appeared to be a gun covered by a dark gray T-shirt. DeLeon was holding the gun with two hands, in a shooting stance, and the T-shirt was wrapped around his hands. Although he did not hear DeLeon say anything, Joshua W. noted DeLeon appeared distraught, angry, and definitely upset. Joshua W. heard the officers say, “Put it down!” or “Don’t shoot!” a few seconds prior to hearing two gun shots. The apparent gun was still in DeLeon’s hand when he fell down on his back. Joshua W. stated, “So, you know, the officers were doing what they’re supposed to do, which is protect themselves, too. And, you know, they told him to not shoot and the guy didn’t do what they asked him, so they shot him down and he fell to the ground.”

Statement of Nicole T.

Nicole T. was in her vehicle, about one car length behind the officers’ vehicle, on the passenger side of the officers’ vehicle. Nicole T. observed DeLeon walking towards the officers with his right hand extended forward, wrapped in what looked like a T-shirt, and pointing it as if he had a gun. Nicole T. heard DeLeon say, “Officer, Officer.” DeLeon looked “crazed” as if he was not of sound mind. Nicole T. heard two gun shots and saw DeLeon fall to the ground with the apparent gun still wrapped in his right hand.

The following morning Nicole T. saw media footage suggesting DeLeon was waving for help and that he was hurt, but Nicole T. stated, “That is not at all the impression I got.” Nicole T. noted that DeLeon was “very intentional in his actions” and appeared to have an “angry sort of crazed intention.”

⁶ The video footage is approximately fourteen seconds long.

Statement of Nicole S.

Nicole S. was in her vehicle which was directly behind Nicole T.'s vehicle. Nicole S. saw that DeLeon had both of his hands wrapped in a towel and appeared to be pointing a gun, which was wrapped within the towel, at the officers. The towel appeared to be "tightly arranged" into the shape of a gun, and did not appear as if someone picked up a towel and just quickly wrapped their hands around it. Nicole T. stated, "It was like if I had to be in an art class and papier-mâché something to look like a weapon. It looked really put together as the shape."

The two officers were yelling something at DeLeon but Nicole S. could not make out their exact words. DeLeon walked about two steps forward in the officers' direction, and Nicole S. then heard about three gun shots.

Statement of Cathleen D. and Darryl D.

Darryl D. and Cathleen D. were in their vehicle, directly behind Nicole S.'s vehicle. Cathleen D. was in the front passenger seat when she observed DeLeon standing by the curb apparently pointing a gun. Cathleen D. stated, "He took a stance right by the curb – on the grass still, but right near the curb, and then his hand comes up like this with a towel, and he's standing like he's actually aiming something." Darryl D. stated, "Even though I couldn't see the gun, I instantly thought, 'He's pointing a gun at somebody, and he's got it wrapped and hidden in a blue T-shirt.'"

Upon learning that DeLeon did not actually have a gun, Cathleen D. stated, "It must have been suicide by a cop. He must have been doing that on purpose to get the police to shoot him." Darryl D. added, "I'm sure the officers didn't want to get shot. Those officers had to think fast."

Statement of Fatemeh Z.

Fatemeh Z. was in her vehicle, in front of Adam and Shannon G.'s vehicle, in the same lane as the officers' vehicle. Fatemeh Z. observed DeLeon raise and extend his arm out pointing his hand at the officers. DeLeon's movement was a "straight raise" of his arm into a shooting stance. DeLeon's hand was covered and it appeared he had a gun wrapped within it. Fatemeh Z. heard the officers yell, "Stop! Put it down!" followed by three shots approximately two seconds later. Fatemeh Z. noted that DeLeon did not look like he was saying he got hurt. Fatemeh Z. noted that if DeLeon had turned with the gun, he could have hit anybody as there were a lot of people there.

Fatemeh Z. questioned why DeLeon would point at the officers in such a fashion if he, in fact, did not have a weapon. Fatemeh Z. stated, "So, there is nothing else to think he's doing other than pointing the weapon at the officer. I thought that maybe it was one of those where they want the cop to shoot them kind of situation."

Statement of Dr. Edwin M.

Dr. Edwin M. was driving by the scene when he observed DeLeon lying on the grass parkway next to a tree and observed Palacios and Stults tending to him. Edwin M. stopped, identified himself as a medical doctor, and assisted the officers in rendering medical assistance.⁷ Edwin M. had the officers rotate DeLeon from his stomach onto his back so that he could assess him better. Edwin M.

⁷ Edwin M. is a California State licensed physician and surgeon.

also asked the officers to remove the handcuffs from DeLeon so that he could treat him, and Palacios did so. DeLeon was handcuffed again a short time later when Northeast Patrol Division Officer Jeffrey Hillings arrived at scene and determined DeLeon was the suspect.

Once DeLeon was rotated onto his back, Edwin M. cleaned the wound and observed one gunshot wound to DeLeon's head. Edwin M. opined that there was an entrance wound on the back of the right ear and an exit wound above the right eyebrow. The wound above the right eyebrow appeared to be approximately two centimeters by two centimeters and had "three bone flaps." Edwin M. concluded that the wound behind the right earlobe was the entrance wound because it was smaller compared to the other wound and upon wiping it, he did not observe "any compounder or anything" and "there was no black residue."⁸

Edwin M. applied bandages and held pressure on the wound until paramedics arrived on scene. Edwin M. noted that DeLeon was very agitated and was trying to pull the bone and tissue above his right eye injury. However, the officers controlled his arms so that he would not inflict additional trauma upon himself. While treating DeLeon, Edwin M. observed what appeared to be a white T-shirt "rolled up like a Tootsie Roll" at the scene.

Compelled Statement of Officer Cairo Palacios

Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Palacios to do so in the present case. On June 10th, 2015, Officer Palacios was interviewed regarding his actions during this officer involved shooting by detectives from Force Investigation Division (FID).

Palacios, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York*, *supra*, at 284-285. Because the LAPD ordered him to answer questions which might expose him to criminal liability, the LAPD compelled Palacios to participate in the interview. The effect of this legal compulsion is that Palacios' statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because the compelled statement is part of Palacios' police personnel file, the statement is confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

⁸ Edwin M. told investigators that he had two years of experience in trauma work at Martin Luther King Jr. Community Hospital in Los Angeles, and during that time his "team used to remove about 47 bullets per weekend."



LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code §197; *People v. Randle* (2005) 35 Cal. 4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal. 4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; see also, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A reasonable belief that danger exists may be formed by reliance on appearances. *Davis v. Freels* (7th Cir. 1978) 583 F.2d 337, 341. No right is guaranteed by federal law that one will be free from circumstances where he will be endangered by the misinterpretation of his acts. *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 805 (quoting *Young v. City of Killen, Tx.* (5th Cir. 1985) 775 F.2d 1349 at 1353).

In determining the reasonableness of an officer's actions, allowances must be made for the fact that police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain and rapidly evolving, about the amount of force that is necessary in a particular situation. *Graham v. Connor* (1989) 490 U.S. 386, 396-398.

CONCLUSION

The evidence examined in this investigation shows Officers Palacios and Stults were sitting in their patrol vehicle, stuck in rush-hour traffic on Los Feliz Boulevard on a Friday night, when they were approached by DeLeon holding an apparent handgun wrapped within a shirt. DeLeon took a two-handed shooting stance and aimed directly at the officers. Although it was ultimately

discovered that DeLeon's shirt contained no weapon, when DeLeon approached the officers he made a deliberate effort to simulate that he, in fact, was aiming a gun at the officers. The evidence examined shows that DeLeon had meticulously wrapped the shirt into the shape of a gun. Further, it is clear from the evidence that DeLeon intended to deliberately deceive the officers into believing that he was armed with a gun. Indeed, immediately prior to the shooting, DeLeon stopped Claus M. directing him to call 9-1-1 to report that he, DeLeon, was armed with a handgun, repeating that statement before walking away.

By all accounts, including his own, DeLeon had a gun. And, per all of the witnesses accounts he aimed the gun directly at the officers, placing them in fear for their lives. The officers took cover and repeatedly ordered DeLeon to put the gun down. Nonetheless, DeLeon continued to advance towards the officers while aiming the apparent gun at them, causing Officer Cairo Palacios to discharge his service weapon in self-defense.



Further, although Dr. Edwin M. concluded that the bullet that struck DeLeon entered through the back of his right ear and exited on the right part of his forehead; this conclusion is not necessarily inconsistent with the witnesses' accounts that DeLeon was facing and advancing toward the officers. It is not unlikely that DeLeon simply turned his head to the left at the time of impact allowing for the bullet to enter through his right ear.

Based on the foregoing, we conclude that Officer Cairo Palacios acted reasonably and lawfully in self-defense and in defense of others when he used deadly force against Walter DeLeon. We are therefore closing our file and will take no further action in this matter.